

INITIATIVE 1163

To the People

Chapter 1, Laws of 2012

LONG-TERM CARE SERVICES--TRAINING--BACKGROUND CHECKS

EFFECTIVE DATE: 01/07/12

Approved by the
People of the State of Washington
in the General Election on
November 8, 2011

ORIGINALLY FILED

April 21, 2011

Secretary of State

1 AN ACT Relating to restoring long-term care services for eligible
2 elderly and persons with disabilities; adding new sections to chapter
3 74.39A RCW; adding new sections to chapter 18.88B RCW; creating new
4 sections; repealing RCW 18.88B.020, 18.88B.030, 18.88B.040, 74.39A.009,
5 74.39A.050, 74.39A.055, 74.39A.073, 74.39A.075, 74.39A.085, 74.39A.260,
6 74.39A.310, 74.39A.330, 74.39A.340, and 74.39A.350; providing an
7 effective date; and providing contingent effective dates.

8 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** It is the intent of the people through this
10 initiative to protect vulnerable elderly and people with disabilities
11 by reinstating the requirement that all long-term care workers obtain
12 criminal background checks and adequate training. The people of the
13 state of Washington find as follows:

14 (1) The state legislature proposes to eliminate the requirement
15 that long-term care workers obtain criminal background checks and
16 adequate training, which would jeopardize the safety and quality care
17 of vulnerable elderly and persons with disabilities. Should the
18 legislature take this action, this initiative will reinstate these

1 critical protections for vulnerable elderly and persons with
2 disabilities; and

3 (2) Taxpayers' investment will be protected by requiring regular
4 program audits, including fraud investigations, and capping
5 administrative expenses.

6 **PART I**

7 **PROTECTING VULNERABLE ELDERLY AND PERSONS WITH DISABILITIES BY**
8 **REINSTATING CRIMINAL BACKGROUND CHECK AND TRAINING REQUIREMENTS**
9 **FOR LONG-TERM CARE WORKERS**

10 NEW SECTION. **Sec. 101.** A new section is added to chapter 74.39A
11 RCW to read as follows:

12 (1) All long-term care workers for the elderly or persons with
13 disabilities hired after January 1, 2012, shall be screened through
14 state and federal background checks in a uniform and timely manner to
15 ensure that they do not have a criminal history that would disqualify
16 them from working with vulnerable persons. These background checks
17 shall include checking against the federal bureau of investigation
18 fingerprint identification records system and against the national sex
19 offenders registry or their successor programs. The department shall
20 require these long-term care workers to submit fingerprints for the
21 purpose of investigating conviction records through both the Washington
22 state patrol and the federal bureau of investigation.

23 (2) To allow the department of health to satisfy its certification
24 responsibilities under chapter 18.88B RCW, the department shall share
25 state and federal background check results with the department of
26 health. Neither department may share the federal background check
27 results with any other state agency or person.

28 (3) The department shall not pass on the cost of these criminal
29 background checks to the workers or their employers.

30 (4) The department shall adopt rules to implement the provisions of
31 this section by August 1, 2010.

32 NEW SECTION. **Sec. 102.** A new section is added to chapter 74.39A
33 RCW to read as follows:

34 The department must perform criminal background checks for
35 individual providers and prospective individual providers and ensure

1 that the authority has ready access to any long-term care abuse and
2 neglect registry used by the department. Individual providers who are
3 hired after January 1, 2012, are subject to background checks under RCW
4 74.39A.055.

5 NEW SECTION. **Sec. 103.** A new section is added to chapter 18.88B
6 RCW to read as follows:

7 (1) Effective January 1, 2011, except as provided in RCW
8 18.88B.040, the department of health shall require that any person
9 hired as a long-term care worker for the elderly or persons with
10 disabilities must be certified as a home care aide within one hundred
11 fifty days from the date of being hired.

12 (2) Except as provided in RCW 18.88B.040, certification as a home
13 care aide requires both completion of seventy-five hours of training
14 and successful completion of a certification examination pursuant to
15 RCW 74.39A.073 and 18.88B.030.

16 (3) No person may practice or, by use of any title or description,
17 represent himself or herself as a certified home care aide without
18 being certified pursuant to this chapter.

19 (4) The department of health shall adopt rules by August 1, 2010,
20 to implement this section.

21 NEW SECTION. **Sec. 104.** A new section is added to chapter 18.88B
22 RCW to read as follows:

23 (1) Effective January 1, 2011, except as provided in RCW
24 18.88B.040, the department of health shall require that all long-term
25 care workers successfully complete a certification examination. Any
26 long-term care worker failing to make the required grade for the
27 examination will not be certified as a home care aide.

28 (2) The department of health, in consultation with consumer and
29 worker representatives, shall develop a home care aide certification
30 examination to evaluate whether an applicant possesses the skills and
31 knowledge necessary to practice competently. Unless excluded by RCW
32 18.88B.040 (1) and (2), only those who have completed the training
33 requirements in RCW 74.39A.073 shall be eligible to sit for this
34 examination.

35 (3) The examination shall include both a skills demonstration and
36 a written or oral knowledge test. The examination papers, all grading

1 of the papers, and records related to the grading of skills
2 demonstration shall be preserved for a period of not less than one
3 year. The department of health shall establish rules governing the
4 number of times and under what circumstances individuals who have
5 failed the examination may sit for the examination, including whether
6 any intermediate remedial steps should be required.

7 (4) All examinations shall be conducted by fair and wholly
8 impartial methods. The certification examination shall be administered
9 and evaluated by the department of health or by a contractor to the
10 department of health that is neither an employer of long-term care
11 workers or private contractors providing training services under this
12 chapter.

13 (5) The department of health has the authority to:

14 (a) Establish forms, procedures, and examinations necessary to
15 certify home care aides pursuant to this chapter;

16 (b) Hire clerical, administrative, and investigative staff as
17 needed to implement this section;

18 (c) Issue certification as a home care aide to any applicant who
19 has successfully completed the home care aide examination;

20 (d) Maintain the official record of all applicants and persons with
21 certificates;

22 (e) Exercise disciplinary authority as authorized in chapter 18.130
23 RCW; and

24 (f) Deny certification to applicants who do not meet training,
25 competency examination, and conduct requirements for certification.

26 (6) The department of health shall adopt rules by August 1, 2010,
27 that establish the procedures, including criteria for reviewing an
28 applicant's state and federal background checks, and examinations
29 necessary to carry this section into effect.

30 NEW SECTION. **Sec. 105.** A new section is added to chapter 18.88B
31 RCW to read as follows:

32 The following long-term care workers are not required to become a
33 certified home care aide pursuant to this chapter.

34 (1) Registered nurses, licensed practical nurses, certified nursing
35 assistants or persons who are in an approved training program for
36 certified nursing assistants under chapter 18.88A RCW, medicare-
37 certified home health aides, or other persons who hold a similar health

1 credential, as determined by the secretary of health, or persons with
2 special education training and an endorsement granted by the
3 superintendent of public instruction, as described in RCW 28A.300.010,
4 if the secretary of health determines that the circumstances do not
5 require certification. Individuals exempted by this subsection may
6 obtain certification as a home care aide from the department of health
7 without fulfilling the training requirements in RCW 74.39A.073 but must
8 successfully complete a certification examination pursuant to RCW
9 18.88B.030.

10 (2) A person already employed as a long-term care worker prior to
11 January 1, 2011, who completes all of his or her training requirements
12 in effect as of the date he or she was hired, is not required to obtain
13 certification. Individuals exempted by this subsection may obtain
14 certification as a home care aide from the department of health without
15 fulfilling the training requirements in RCW 74.39A.073 but must
16 successfully complete a certification examination pursuant to RCW
17 18.88B.030.

18 (3) All long-term care workers employed by supported living
19 providers are not required to obtain certification under this chapter.

20 (4) An individual provider caring only for his or her biological,
21 step, or adoptive child or parent is not required to obtain
22 certification under this chapter.

23 (5) Prior to June 30, 2014, a person hired as an individual
24 provider who provides twenty hours or less of care for one person in
25 any calendar month is not required to obtain certification under this
26 chapter.

27 (6) A long-term care worker exempted by this section from the
28 training requirements contained in RCW 74.39A.073 may not be prohibited
29 from enrolling in training pursuant to that section.

30 (7) The department of health shall adopt rules by August 1, 2010,
31 to implement this section.

32 NEW SECTION. **Sec. 106.** A new section is added to chapter 74.39A
33 RCW to read as follows:

34 The department's system of quality improvement for long-term care
35 services shall use the following principles, consistent with applicable
36 federal laws and regulations:

1 (1) The system shall be client-centered and promote privacy,
2 independence, dignity, choice, and a home or home-like environment for
3 consumers consistent with chapter 392, Laws of 1997.

4 (2) The goal of the system is continuous quality improvement with
5 the focus on consumer satisfaction and outcomes for consumers. This
6 includes that when conducting licensing or contract inspections, the
7 department shall interview an appropriate percentage of residents,
8 family members, resident case managers, and advocates in addition to
9 interviewing providers and staff.

10 (3) Providers should be supported in their efforts to improve
11 quality and address identified problems initially through training,
12 consultation, technical assistance, and case management.

13 (4) The emphasis should be on problem prevention both in monitoring
14 and in screening potential providers of service.

15 (5) Monitoring should be outcome based and responsive to consumer
16 complaints and based on a clear set of health, quality of care, and
17 safety standards that are easily understandable and have been made
18 available to providers, residents, and other interested parties.

19 (6) Prompt and specific enforcement remedies shall also be
20 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,
21 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have
22 delivered care or failed to deliver care resulting in problems that are
23 serious, recurring, or uncorrected, or that create a hazard that is
24 causing or likely to cause death or serious harm to one or more
25 residents. These enforcement remedies may also include, when
26 appropriate, reasonable conditions on a contract or license. In the
27 selection of remedies, the safety, health, and well-being of residents
28 shall be of paramount importance.

29 (7) All long-term care workers shall be screened through background
30 checks in a uniform and timely manner to ensure that they do not have
31 a criminal history that would disqualify them from working with
32 vulnerable persons. Long-term care workers who are hired after January
33 1, 2012, are subject to background checks under RCW 74.39A.055. This
34 information will be shared with the department of health in accordance
35 with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

36 (8) No provider, or its staff, or long-term care worker, or
37 prospective provider or long-term care worker, with a stipulated
38 finding of fact, conclusion of law, an agreed order, or finding of

1 fact, conclusion of law, or final order issued by a disciplining
2 authority, a court of law, or entered into a state registry finding him
3 or her guilty of abuse, neglect, exploitation, or abandonment of a
4 minor or a vulnerable adult as defined in chapter 74.34 RCW shall be
5 employed in the care of and have unsupervised access to vulnerable
6 adults.

7 (9) The department shall establish, by rule, a state registry which
8 contains identifying information about long-term care workers
9 identified under this chapter who have substantiated findings of abuse,
10 neglect, financial exploitation, or abandonment of a vulnerable adult
11 as defined in RCW 74.34.020. The rule must include disclosure,
12 disposition of findings, notification, findings of fact, appeal rights,
13 and fair hearing requirements. The department shall disclose, upon
14 request, substantiated findings of abuse, neglect, financial
15 exploitation, or abandonment to any person so requesting this
16 information. This information will also be shared with the department
17 of health to advance the purposes of chapter 2, Laws of 2009.

18 (10) Until December 31, 2010, individual providers and home care
19 agency providers must satisfactorily complete department-approved
20 orientation, basic training, and continuing education within the time
21 period specified by the department in rule. The department shall adopt
22 rules by March 1, 2002, for the implementation of this section. The
23 department shall deny payment to an individual provider or a home care
24 provider who does not complete the training requirements within the
25 time limit specified by the department by rule.

26 (11) Until December 31, 2010, in an effort to improve access to
27 training and education and reduce costs, especially for rural
28 communities, the coordinated system of long-term care training and
29 education must include the use of innovative types of learning
30 strategies such as internet resources, videotapes, and distance
31 learning using satellite technology coordinated through community
32 colleges or other entities, as defined by the department.

33 (12) The department shall create an approval system by March 1,
34 2002, for those seeking to conduct department-approved training.

35 (13) The department shall establish, by rule, background checks and
36 other quality assurance requirements for long-term care workers who
37 provide in-home services funded by medicaid personal care as described
38 in RCW 74.09.520, community options program entry system waiver

1 services as described in RCW 74.39A.030, or chore services as described
2 in RCW 74.39A.110 that are equivalent to requirements for individual
3 providers. Long-term care workers who are hired after January 1, 2012,
4 are subject to background checks under RCW 74.39A.055.

5 (14) Under existing funds the department shall establish internally
6 a quality improvement standards committee to monitor the development of
7 standards and to suggest modifications.

8 (15) Within existing funds, the department shall design, develop,
9 and implement a long-term care training program that is flexible,
10 relevant, and qualifies towards the requirements for a nursing
11 assistant certificate as established under chapter 18.88A RCW. This
12 subsection does not require completion of the nursing assistant
13 certificate training program by providers or their staff. The long-
14 term care teaching curriculum must consist of a fundamental module, or
15 modules, and a range of other available relevant training modules that
16 provide the caregiver with appropriate options that assist in meeting
17 the resident's care needs. Some of the training modules may include,
18 but are not limited to, specific training on the special care needs of
19 persons with developmental disabilities, dementia, mental illness, and
20 the care needs of the elderly. No less than one training module must
21 be dedicated to workplace violence prevention. The nursing care
22 quality assurance commission shall work together with the department to
23 develop the curriculum modules. The nursing care quality assurance
24 commission shall direct the nursing assistant training programs to
25 accept some or all of the skills and competencies from the curriculum
26 modules towards meeting the requirements for a nursing assistant
27 certificate as defined in chapter 18.88A RCW. A process may be
28 developed to test persons completing modules from a caregiver's class
29 to verify that they have the transferable skills and competencies for
30 entry into a nursing assistant training program. The department may
31 review whether facilities can develop their own related long-term care
32 training programs. The department may develop a review process for
33 determining what previous experience and training may be used to waive
34 some or all of the mandatory training. The department of social and
35 health services and the nursing care quality assurance commission shall
36 work together to develop an implementation plan by December 12, 1998.

1 NEW SECTION. **Sec. 107.** A new section is added to chapter 74.39A
2 RCW to read as follows:

3 (1) Effective January 1, 2011, except as provided in RCW
4 18.88B.040, all persons employed as long-term care workers for the
5 elderly or persons with disabilities must meet the minimum training
6 requirements in this section within one hundred twenty calendar days of
7 employment.

8 (2) All persons employed as long-term care workers must obtain
9 seventy-five hours of entry-level training approved by the department.
10 A long-term care worker must accomplish five of these seventy-five
11 hours before becoming eligible to provide care.

12 (3) Training required by subsection (4)(c) of this section will be
13 applied towards training required under RCW 18.20.270 or 70.128.230 as
14 well as any statutory or regulatory training requirements for long-term
15 care workers employed by supportive living providers.

16 (4) Only training curriculum approved by the department may be used
17 to fulfill the training requirements specified in this section. The
18 seventy-five hours of entry-level training required shall be as
19 follows:

20 (a) Before a long-term care worker is eligible to provide care, he
21 or she must complete two hours of orientation training regarding his or
22 her role as caregiver and the applicable terms of employment;

23 (b) Before a long-term care worker is eligible to provide care, he
24 or she must complete three hours of safety training, including basic
25 safety precautions, emergency procedures, and infection control; and

26 (c) All long-term care workers must complete seventy hours of
27 long-term care basic training, including training related to core
28 competencies and population specific competencies.

29 (5) The department shall only approve training curriculum that:

30 (a) Has been developed with input from consumer and worker
31 representatives; and

32 (b) Requires comprehensive instruction by qualified instructors on
33 the competencies and training topics in this section.

34 (6) Individual providers under RCW 74.39A.270 shall be compensated
35 for training time required by this section.

36 (7) The department of health shall adopt rules by August 1, 2010,
37 to implement subsections (1), (2), and (3) of this section.

1 (8) The department shall adopt rules by August 1, 2010, to
2 implement subsections (4) and (5) of this section.

3 NEW SECTION. **Sec. 108.** A new section is added to chapter 74.39A
4 RCW to read as follows:

5 (1) Effective January 1, 2011, a biological, step, or adoptive
6 parent who is the individual provider only for his or her
7 developmentally disabled son or daughter must receive twelve hours of
8 training relevant to the needs of adults with developmental
9 disabilities within the first one hundred twenty days of becoming an
10 individual provider.

11 (2) Effective January 1, 2011, individual providers identified in
12 (a) and (b) of this subsection must complete thirty-five hours of
13 training within the first one hundred twenty days of becoming an
14 individual provider. Five of the thirty-five hours must be completed
15 before becoming eligible to provide care. Two of these five hours
16 shall be devoted to an orientation training regarding an individual
17 provider's role as caregiver and the applicable terms of employment,
18 and three hours shall be devoted to safety training, including basic
19 safety precautions, emergency procedures, and infection control.
20 Individual providers subject to this requirement include:

21 (a) An individual provider caring only for his or her biological,
22 step, or adoptive child or parent unless covered by subsection (1) of
23 this section; and

24 (b) Before January 1, 2014, a person hired as an individual
25 provider who provides twenty hours or less of care for one person in
26 any calendar month.

27 (3) Only training curriculum approved by the department may be used
28 to fulfill the training requirements specified in this section. The
29 department shall only approve training curriculum that:

30 (a) Has been developed with input from consumer and worker
31 representatives; and

32 (b) Requires comprehensive instruction by qualified instructors.

33 (4) The department shall adopt rules by August 1, 2010, to
34 implement this section.

35 NEW SECTION. **Sec. 109.** A new section is added to chapter 74.39A
36 RCW to read as follows:

1 (1) The department shall deny payment to any individual provider of
2 home care services who has not been certified by the department of
3 health as a home care aide as required under chapter 2, Laws of 2009
4 or, if exempted from certification by RCW 18.88B.040, has not completed
5 his or her required training pursuant to chapter 2, Laws of 2009.

6 (2) The department may terminate the contract of any individual
7 provider of home care services, or take any other enforcement measure
8 deemed appropriate by the department if the individual provider's
9 certification is revoked under chapter 2, Laws of 2009 or, if exempted
10 from certification by RCW 18.88B.040, has not completed his or her
11 required training pursuant to chapter 2, Laws of 2009.

12 (3) The department shall take appropriate enforcement action
13 related to the contract of a private agency or facility licensed by the
14 state, to provide personal care services, other than an individual
15 provider, who knowingly employs a long-term care worker who is not a
16 certified home care aide as required under chapter 2, Laws of 2009 or,
17 if exempted from certification by RCW 18.88B.040, has not completed his
18 or her required training pursuant to chapter 2, Laws of 2009.

19 (4) Chapter 34.05 RCW shall govern actions by the department under
20 this section.

21 (5) The department shall adopt rules by August 1, 2010, to
22 implement this section.

23 NEW SECTION. **Sec. 110.** A new section is added to chapter 74.39A
24 RCW to read as follows:

25 (1) The department shall create a formula that converts the cost of
26 the increase in wages and benefits negotiated and funded in the
27 contract for individual providers of home care services pursuant to RCW
28 74.39A.270 and 74.39A.300, into a per-hour amount, excluding those
29 benefits defined in subsection (2) of this section. That per-hour
30 amount shall be added to the statewide home care agency vendor rate and
31 shall be used exclusively for improving the wages and benefits of home
32 care agency workers who provide direct care. The formula shall account
33 for:

34 (a) All types of wages, benefits, and compensation negotiated and
35 funded each biennium, including but not limited to:

36 (i) Regular wages;

37 (ii) Benefit pay, such as vacation, sick, and holiday pay;

1 (iii) Taxes on wages/benefit pay;

2 (iv) Mileage; and

3 (v) Contributions to a training partnership; and

4 (b) The increase in the average cost of worker's compensation for
5 home care agencies and application of the increases identified in (a)
6 of this subsection to all hours required to be paid, including travel
7 time, of direct service workers under the wage and hour laws and
8 associated employer taxes.

9 (2) The contribution rate for health care benefits, including but
10 not limited to medical, dental, and vision benefits, for eligible
11 agency home care workers shall be paid by the department to home care
12 agencies at the same rate as negotiated and funded in the collective
13 bargaining agreement for individual providers of home care services.

14 NEW SECTION. **Sec. 111.** A new section is added to chapter 74.39A
15 RCW to read as follows:

16 Long-term care workers shall be offered on-the-job training or peer
17 mentorship for at least one hour per week in the first ninety days of
18 work from a long-term care worker who has completed at least twelve
19 hours of mentor training and is mentoring no more than ten other
20 workers at any given time. This requirement applies to long-term care
21 workers who begin work on or after July 1, 2011.

22 NEW SECTION. **Sec. 112.** A new section is added to chapter 74.39A
23 RCW to read as follows:

24 (1) The department of health shall ensure that all long-term care
25 workers shall complete twelve hours of continuing education training in
26 advanced training topics each year. This requirement applies beginning
27 on July 1, 2011.

28 (2) Completion of continuing education as required in this section
29 is a prerequisite to maintaining home care aide certification under
30 chapter 2, Laws of 2009.

31 (3) Unless voluntarily certified as a home care aide under chapter
32 2, Laws of 2009, subsection (1) of this section does not apply to:

33 (a) An individual provider caring only for his or her biological,
34 step, or adoptive child; and

35 (b) Before June 30, 2014, a person hired as an individual provider

1 who provides twenty hours or less of care for one person in any
2 calendar month.

3 (4) Only training curriculum approved by the department may be used
4 to fulfill the training requirements specified in this section. The
5 department shall only approve training curriculum that:

6 (a) Has been developed with input from consumer and worker
7 representatives; and

8 (b) Requires comprehensive instruction by qualified instructors.

9 (5) Individual providers under RCW 74.39A.270 shall be compensated
10 for training time required by this section.

11 (6) The department of health shall adopt rules by August 1, 2010,
12 to implement subsections (1), (2), and (3) of this section.

13 (7) The department shall adopt rules by August 1, 2010, to
14 implement subsection (4) of this section.

15 NEW SECTION. **Sec. 113.** A new section is added to chapter 74.39A
16 RCW to read as follows:

17 The department shall offer, directly or through contract, training
18 opportunities sufficient for a long-term care worker to accumulate
19 seventy hours of training within a reasonable time period. For
20 individual providers represented by an exclusive bargaining
21 representative under RCW 74.39A.270, the training opportunities shall
22 be offered through the training partnership established under RCW
23 74.39A.360. Training topics shall include, but are not limited to:
24 Client rights; personal care; mental illness; dementia; developmental
25 disabilities; depression; medication assistance; advanced communication
26 skills; positive client behavior support; developing or improving
27 client-centered activities; dealing with wandering or aggressive client
28 behaviors; medical conditions; nurse delegation core training; peer
29 mentor training; and advocacy for quality care training. The
30 department may not require long-term care workers to obtain the
31 training described in this section. This requirement to offer advanced
32 training applies beginning January 1, 2012.

33 NEW SECTION. **Sec. 114.** A new section is added to chapter 74.39A
34 RCW to read as follows:

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter.

- 1 (1) "Adult family home" means a home licensed under chapter 70.128
2 RCW.
- 3 (2) "Adult residential care" means services provided by a boarding
4 home that is licensed under chapter 18.20 RCW and that has a contract
5 with the department under RCW 74.39A.020 to provide personal care
6 services.
- 7 (3) "Assisted living services" means services provided by a
8 boarding home that has a contract with the department under RCW
9 74.39A.010 to provide personal care services, intermittent nursing
10 services, and medication administration services, and the resident is
11 housed in a private apartment-like unit.
- 12 (4) "Boarding home" means a facility licensed under chapter 18.20
13 RCW.
- 14 (5) "Core competencies" means basic training topics, including but
15 not limited to, communication skills, worker self-care, problem
16 solving, maintaining dignity, consumer directed care, cultural
17 sensitivity, body mechanics, fall prevention, skin and body care, long-
18 term care worker roles and boundaries, supporting activities of daily
19 living, and food preparation and handling.
- 20 (6) "Cost-effective care" means care provided in a setting of an
21 individual's choice that is necessary to promote the most appropriate
22 level of physical, mental, and psychosocial well-being consistent with
23 client choice, in an environment that is appropriate to the care and
24 safety needs of the individual, and such care cannot be provided at a
25 lower cost in any other setting. But this in no way precludes an
26 individual from choosing a different residential setting to achieve his
27 or her desired quality of life.
- 28 (7) "Department" means the department of social and health
29 services.
- 30 (8) "Developmental disability" has the same meaning as defined in
31 RCW 71A.10.020.
- 32 (9) "Direct care worker" means a paid caregiver who provides
33 direct, hands-on personal care services to persons with disabilities or
34 the elderly requiring long-term care.
- 35 (10) "Enhanced adult residential care" means services provided by
36 a boarding home that is licensed under chapter 18.20 RCW and that has
37 a contract with the department under RCW 74.39A.010 to provide personal

1 care services, intermittent nursing services, and medication
2 administration services.

3 (11) "Functionally disabled person" or "person who is functionally
4 disabled" is synonymous with chronic functionally disabled and means a
5 person who because of a recognized chronic physical or mental condition
6 or disease, or developmental disability, including chemical dependency,
7 is impaired to the extent of being dependent upon others for direct
8 care, support, supervision, or monitoring to perform activities of
9 daily living. "Activities of daily living", in this context, means
10 self-care abilities related to personal care such as bathing, eating,
11 using the toilet, dressing, and transfer. Instrumental activities of
12 daily living may also be used to assess a person's functional abilities
13 as they are related to the mental capacity to perform activities in the
14 home and the community such as cooking, shopping, house cleaning, doing
15 laundry, working, and managing personal finances.

16 (12) "Home and community services" means adult family homes, in-
17 home services, and other services administered or provided by contract
18 by the department directly or through contract with area agencies on
19 aging or similar services provided by facilities and agencies licensed
20 by the department.

21 (13) "Home care aide" means a long-term care worker who has
22 obtained certification as a home care aide by the department of health.

23 (14) "Individual provider" is defined according to RCW 74.39A.240.

24 (15) "Long-term care" is synonymous with chronic care and means
25 care and supports delivered indefinitely, intermittently, or over a
26 sustained time to persons of any age disabled by chronic mental or
27 physical illness, disease, chemical dependency, or a medical condition
28 that is permanent, not reversible or curable, or is long-lasting and
29 severely limits their mental or physical capacity for self-care. The
30 use of this definition is not intended to expand the scope of services,
31 care, or assistance by any individuals, groups, residential care
32 settings, or professions unless otherwise expressed by law.

33 (16) (a) "Long-term care workers for the elderly or persons with
34 disabilities" or "long-term care workers" includes all persons who are
35 long-term care workers for the elderly or persons with disabilities,
36 including but not limited to individual providers of home care
37 services, direct care employees of home care agencies, providers of
38 home care services to persons with developmental disabilities under

1 Title 71 RCW, all direct care workers in state-licensed boarding homes,
2 assisted living facilities, and adult family homes, respite care
3 providers, community residential service providers, and any other
4 direct care worker providing home or community-based services to the
5 elderly or persons with functional disabilities or developmental
6 disabilities.

7 (b) "Long-term care workers" do not include: (i) Persons employed
8 by the following facilities or agencies: Nursing homes subject to
9 chapter 18.51 RCW, hospitals or other acute care settings, residential
10 habilitation centers under chapter 71A.20 RCW, facilities certified
11 under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127
12 RCW, adult day care centers, and adult day health care centers; or (ii)
13 persons who are not paid by the state or by a private agency or
14 facility licensed by the state to provide personal care services.

15 (17) "Nursing home" means a facility licensed under chapter 18.51
16 RCW.

17 (18) "Personal care services" means physical or verbal assistance
18 with activities of daily living and instrumental activities of daily
19 living provided because of a person's functional disability.

20 (19) "Population specific competencies" means basic training topics
21 unique to the care needs of the population the long-term care worker is
22 serving, including but not limited to, mental health, dementia,
23 developmental disabilities, young adults with physical disabilities,
24 and older adults.

25 (20) "Qualified instructor" means a registered nurse or other
26 person with specific knowledge, training, and work experience in the
27 provision of direct, hands-on personal care and other assistance
28 services to the elderly or persons with disabilities requiring
29 long-term care.

30 (21) "Secretary" means the secretary of social and health services.

31 (22) "Secretary of health" means the secretary of health or the
32 secretary's designee.

33 (23) "Training partnership" means a joint partnership or trust that
34 includes the office of the governor and the exclusive bargaining
35 representative of individual providers under RCW 74.39A.270 with the
36 capacity to provide training, peer mentoring, and workforce
37 development, or other services to individual providers.

1 (24) "Tribally licensed boarding home" means a boarding home
2 licensed by a federally recognized Indian tribe which home provides
3 services similar to boarding homes licensed under chapter 18.20 RCW.

4 NEW SECTION. **Sec. 115.** The following acts or parts of acts are
5 each repealed:

6 (1) RCW 18.88B.020 (Certification requirements) and 2011 c ... s
7 ..., 2009 c 580 s 18, & 2009 c 2 s 4;

8 (2) RCW 18.88B.030 (Certification examinations) and 2011 c ... s
9 ..., 2009 c 580 s 4, & 2009 c 2 s 6;

10 (3) RCW 18.88B.040 (Exemptions from training requirements) and 2011
11 c ... s ..., 2010 c 169 s 11, 2009 c 580 s 15, & 2009 c 2 s 7;

12 (4) RCW 74.39A.009 (Definitions) and 2011 c ... s ..., 2009 c 580
13 s 1, 2009 c 2 s 2, 2007 c 361 s 2, 2004 c 142 s 14, & 1997 c 392 s 103;

14 (5) RCW 74.39A.050 (Quality improvement principles) and 2011 c ...
15 s ..., 2009 c 580 s 7, 2009 c 2 s 14, 2004 c 140 s 6, 2000 c 121 s 10,
16 1999 c 336 s 5, 1998 c 85 s 1, 1997 c 392 s 209, & 1995 1st sp.s. c 18
17 s 12;

18 (6) RCW 74.39A.055 (Criminal history checks on long-term care
19 workers) and 2011 c ... s ..., 2009 c 580 s 2, & 2009 c 2 s 3;

20 (7) RCW 74.39A.073 (Training requirements for long-term care
21 workers) and 2011 c ... s ..., 2009 c 580 s 10, & 2009 c 2 s 5;

22 (8) RCW 74.39A.075 (Training requirements for individual providers
23 caring for family members) and 2011 c ... s ..., 2009 c 580 s 11, &
24 2009 c 2 s 8;

25 (9) RCW 74.39A.085 (Enforcement actions against persons not
26 certified as home care aides and their employers) and 2011 c ... s ...,
27 2009 c 580 s 14, & 2009 c 2 s 12;

28 (10) RCW 74.39A.260 (Department duties--Criminal background checks
29 on individual providers) and 2011 c ... s ..., 2009 c 580 s 9, & 2002
30 c 3 s 5;

31 (11) RCW 74.39A.310 (Contract for individual home care services
32 providers--Cost of increase in wages and benefits funded--Formula) and
33 2011 c ... s ..., 2007 c 361 s 8, & 2006 c 9 s 1;

34 (12) RCW 74.39A.330 (Peer mentoring) and 2011 c ... s ..., 2009 c
35 478 s 1, & 2007 c 361 s 3;

36 (13) RCW 74.39A.340 (Continuing education requirements for long-

1 term care workers) and 2011 c ... s ..., 2009 c 580 s 12, 2009 c 2 s 9,
2 & 2007 c 361 s 4; and
3 (14) RCW 74.39A.350 (Advanced training) and 2011 c ... s ..., 2009
4 c 580 s 13, 2009 c 2 s 10, & 2007 c 361 s 5.

5 **PART II**
6 **PROTECTING TAXPAYERS BY REQUIRING ANNUAL INDEPENDENT AUDITS,**
7 **INCREASING FRAUD INVESTIGATION, AND CAPPING ADMINISTRATIVE**
8 **EXPENSES**

9 NEW SECTION. **Sec. 201.** The state auditor shall conduct
10 performance audits of the long-term in-home care program. The first
11 audit must be completed within twelve months after the effective date
12 of this section, and must be completed on a biannual basis thereafter.
13 As part of this auditing process, the state shall hire five additional
14 fraud investigators to ensure that clients receiving services at
15 taxpayers' expense are medically and financially qualified to receive
16 the services and are actually receiving the services.

17 NEW SECTION. **Sec. 202.** The people hereby establish limits on the
18 percentage of tax revenues that can be used for administrative expenses
19 in the long-term in-home care program. Within one hundred eighty days
20 of the effective date of this section, the state shall prepare a plan
21 to cap administrative expenses so that at least ninety percent of
22 taxpayer spending must be devoted to direct care. This limitation must
23 be achieved within two years from the effective date of this section.

24 **PART III**
25 **MISCELLANEOUS**

26 NEW SECTION. **Sec. 301.** (1) Sections 101 and 115(6) of this act
27 only take effect if RCW 74.39A.055 is amended or repealed by the
28 legislature in 2011.

29 (2) Sections 102 and 115(10) of this act only take effect if RCW
30 74.39A.260 is amended or repealed by the legislature in 2011.

31 (3) Sections 103 and 115(1) of this act only take effect if RCW
32 18.88B.020 is amended or repealed by the legislature in 2011.

- 1 (4) Sections 104 and 115(2) of this act only take effect if RCW
2 18.88B.030 is amended or repealed by the legislature in 2011.
- 3 (5) Sections 105 and 115(3) of this act only take effect if RCW
4 18.88B.040 is amended or repealed by the legislature in 2011.
- 5 (6) Sections 106 and 115(5) of this act only take effect if RCW
6 74.39A.050 is amended or repealed by the legislature in 2011.
- 7 (7) Sections 107 and 115(7) of this act only take effect if RCW
8 74.39A.073 is amended or repealed by the legislature in 2011.
- 9 (8) Sections 108 and 115(8) of this act only take effect if RCW
10 74.39A.075 is amended or repealed by the legislature in 2011.
- 11 (9) Sections 109 and 115(9) of this act only take effect if RCW
12 74.39A.085 is amended or repealed by the legislature in 2011.
- 13 (10) Sections 110 and 115(11) of this act only take effect if RCW
14 74.39A.310 is amended or repealed by the legislature in 2011.
- 15 (11) Sections 111 and 115(12) of this act only take effect if RCW
16 74.39A.330 is amended or repealed by the legislature in 2011.
- 17 (12) Sections 112 and 115(13) of this act only take effect if RCW
18 74.39A.340 is amended or repealed by the legislature in 2011.
- 19 (13) Sections 113 and 115(14) of this act only take effect if RCW
20 74.39A.350 is amended or repealed by the legislature in 2011.
- 21 (14) Sections 114 and 115(4) of this act only take effect if RCW
22 74.39A.009 is amended or repealed by the legislature in 2011.
- 23 (15) Section 303 of this act takes effect only if one or more other
24 sections of this act take effect pursuant to paragraphs (1) through
25 (14) of this section.

26 NEW SECTION. **Sec. 302.** The code reviser is directed to note in
27 the Revised Code of Washington that sections 101 through 114 of this
28 act are versions of statutes existing prior to the 2011 regular
29 legislative session as follows:

- 30 (1) Section 101 of this act is the same language as RCW 74.39A.055
31 and 2009 c 580 s 2;
- 32 (2) Section 102 of this act is the same language as RCW 74.39A.260
33 and 2009 c 580 s 9;
- 34 (3) Section 103 of this act is the same language as RCW 18.88B.020
35 and 2009 c 580 s 18;
- 36 (4) Section 104 of this act is the same language as RCW 18.88B.030
37 and 2009 c 580 s 4;

1 (5) Section 105 of this act is the same language as RCW 18.88B.040
2 and 2010 c 169 s 11;

3 (6) Section 106 of this act is the same language as RCW 74.39A.050
4 and 2009 c 580 s 7;

5 (7) Section 107 of this act is the same language as RCW 74.39A.073
6 and 2009 c 580 s 10;

7 (8) Section 108 of this act is the same language as RCW 74.39A.075
8 and 2009 c 580 s 11;

9 (9) Section 109 of this act is the same language as RCW 74.39A.085
10 and 2009 c 580 s 14;

11 (10) Section 110 of this act is the same language as RCW 74.39A.310
12 and 2007 c 361 s 8;

13 (11) Section 111 of this act is the same language as RCW 74.39A.330
14 and 2009 c 478 s 1;

15 (12) Section 112 of this act is the same language as RCW 74.39A.340
16 and 2009 c 580 s 12;

17 (13) Section 113 of this act is the same language as RCW 74.39A.350
18 and 2009 c 580 s 13; and

19 (14) Section 114 of this act is the same language as RCW 74.39A.009
20 and 2009 c 580 s 1.

21 If any of sections 101 through 114 of this act take effect, the
22 code reviser is directed to codify such sections in the revised code of
23 washington under the same statute number as previously used for such
24 statute, as set forth in this section.

25 NEW SECTION. **Sec. 303.** Notwithstanding any action of the
26 legislature during 2011, all long-term care workers as defined under
27 RCW 74.39A.009(16), as it existed on April 1, 2011, are covered by
28 sections 101 through 113 of this act or by the corresponding original
29 versions of the statutes, as referenced in section 302 (1) through (13)
30 on the schedules set forth in those sections, except that long-term
31 care workers employed as community residential service providers are
32 covered by sections 101 through 113 of this act beginning January 1,
33 2016.

34 NEW SECTION. **Sec. 304.** A new section is added to chapter 74.39A
35 RCW to read as follows:

1 (1) If any provision of this act triggers changes to an agreement
2 reached under RCW 74.39A.300, the changes must go into effect
3 immediately without need for legislative approval.

4 (2) The requirements contained in RCW 74.39A.300 and this act
5 constitute ministerial, mandatory, and nondiscretionary duties.
6 Failure to fully perform such duties constitutes a violation of this
7 act. Any person may bring an action to require the governor or other
8 responsible persons to perform such duties. Such action may be brought
9 in the superior court, at the petitioner's option, for (a) Thurston
10 county, or (b) the county of the petitioner's residence or principal
11 place of business, or such action may be filed directly with the
12 supreme court, which is hereby given original jurisdiction over such
13 action.

14 NEW SECTION. **Sec. 305.** The provisions of this act are to be
15 liberally construed to effectuate the intent, policies, and purposes of
16 this act.

17 NEW SECTION. **Sec. 306.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 307.** This act takes effect sixty days from its
22 enactment by the people.

23 NEW SECTION. **Sec. 308.** This act may be known and cited as the
24 restoring quality home care initiative.

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Approved by the People of the State of Washington in the General
Election on November 8, 2011.